



Report to the Auburn City Council

Action Item

Agenda Item No. **6**

[Signature]
City Manager Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works *BS*
By: Carie Huff, P.E., Associate Civil Engineer *CH*
Date: March 11, 2013
Subject: Palm Avenue Sidewalk and Bicycle Lane Project – Right-of-Way Certification

The Issue

Shall the City Council approve a consultant agreement with Bender Rosenthal, Inc. for Right-of-Way Certification services for the Palm Avenue Sidewalk and Bicycle Lane Project?

Conclusion and Recommendation

Staff recommends that the City Council, by **RESOLUTION**, authorize the Director of Public Works to execute a consultant agreement with Bender Rosenthal, Inc. for Right-of-Way Certification services for the Palm Avenue Sidewalk and Bicycle Lane Project subject to approval of form by the City Attorney in an amount not to exceed \$35,000.

Background

After completing the Phase II Environmental Site Assessment and submitting the report to Caltrans on January 3rd, 2013, the City received the National Environmental Policy Act Categorical Exclusion on February 11th, 2013, allowing the City to proceed with the Right-of-Way Certification process.

During the preliminary analysis into the Right-of-Way Certification process, staff proceeded with the assumption that right-of-entry documentation was similar to the Right-of-Way Certification that had been completed with other projects. While previous federal projects were able to be certified because the improvements were located within existing right-of-way, the Palm Avenue Sidewalk and Bicycle Lane Project includes the expansion of the existing roadway footprint outside of the existing City right-of-way. Since staff had received right-of-entry agreements from the property owners involved with the project it was anticipated that the Right-of-Way Certification would move forward with the right-of-entry agreements with the final right-of-way resolved once the improvements were in place. However, federal aid projects require the acquisition of right-of-way prior to submitting for the authorization to construct. Procedures for the right-of-way acquisition are defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 USC 4601 *et seq.*) and implementing regulation, 49 CFR Part 24; California Government Code Section 7267 *et seq.*; California Code of Civil Procedure Sections 1263.010 to 1263.620 and 1255.010 to 1255.060; Housing and Community Development Title 25; State of California, Department of Transportation, Right of Way and Local Assistance Project Delivery Manuals. These federal regulations require acquisition expertise that City of Auburn staff does not possess. As such, two firms were solicited for the Right-of-Way Certification services and provided proposals. Bender Rosenthal, Inc. clearly demonstrated their experience of the Right-of-Way Certification process and their ability to perform the work in a timely manner. Bender Rosenthal, Inc. will complete the appraisal process and acquisition phases of the project, including the development of all documents associated with City and Caltrans approval, the Appraisal Report and Waiver Valuation and coordinate the independent appraisal review for any parcels that are valued over \$10,000. Although

initial indications from the property owners impacted by the project have shown the willingness to work with the City and, in some cases, the inclination to donate the property required for the project, the federal aid process still requires certain acquisition procedures. For instance, appraisals must be completed for each property and that just compensation is due. If the property owners wish to donate the property, they then waive the right for just compensation and appropriate documentation will be submitted to Caltrans. Bender Rosenthal, Inc. has extensive experience with the Right-of-Way Certification process and has demonstrated direct relationships with Caltrans. They also appreciate the critical path nature of the process in regards to submittal for the authorization to construct. Bender Rosenthal, Inc. anticipates a June 15, 2013 Right-of-Way Certification which means that the City would submit the Authorization to Construct as soon as the Right-of-Way Certification is received.

Other Palm Avenue updates include the PCWA approval of their portion of the design. PG&E has completed their design and City staff continues to coordinate with AT&T regarding the relocation of their facilities for the project construction.

Construction of the Palm Avenue Sidewalk and Bicycle Lane project is scheduled for late summer of 2013.

Fiscal Impact

Funding for this project are federal funds that are administered by the State of California Department of Transportation under the Federal Safe Routes to School program as well as Congestion Mitigation Air Quality (CMAQ) funding. Following is a breakdown of the funding:

CMAQ – Congestion Mitigation Air Quality	\$102,033
City of Auburn CMAQ Match (11.47%)	\$15,693
Federal Safe Routes to School Program (includes additional funding)	\$896,579
City of Auburn Safe Routes to School Match (10%)	\$89,657
Total	\$1,103,962

The Safe Routes to School and CMAQ grants require the City of Auburn to match in an amount of \$105,350 and will be responsible for any additional money over the grant amount. It is anticipated that these funds will be allocated from the Highway 49 Traffic Mitigation Funds of which \$301,388 is available.

Following are the estimates to complete the project which include City of Auburn staff time, construction administration and materials testing (\$15,000, \$50,000 and \$10,000 respectively).

Coastland Civil Engineering Design	\$179,655
Bender Rosenthal, Inc. ROW Certification	\$35,000
Right-of-Way Acquisition	unknown at this time
City of Auburn Staff Time (estimate)	\$15,000
Construction Administration (estimate)	\$50,000
Construction Materials Testing (estimate)	\$10,000
Total	\$289,655

Therefore, the City of Auburn has \$814,307 to spend on the construction of Palm Avenue Sidewalk and Bicycle Lane Project without authorizing additional money.

The most recent estimate of probable construction costs is \$1,277,911 with an additional \$142,000 in non-participating costs (\$85,000 for PG&E pole and guy anchor relocation and \$57,000 for PCWA pipeline relocation). PCWA's portion of the project is fully reimbursable.

Summary

The Palm Avenue Sidewalk and Bicycle Lane Project schedule was significantly impacted by the Caltrans environmental testing requirements. The project was scheduled to go to construction in the summer of 2012; however, the addition of the Phase I Initial Site Assessment, the Cultural Resource Analysis Report, the Historical Property Survey Report and the Phase II Environmental Site Assessment for Naturally Occurring Asbestos (NOA) and Aerially Deposited Lead (ADL) pushed the project back nearly a year. The delay caused by the additional environmental work meant the project was red-flagged by SACOG for not meeting delivery milestones. The Right-of-Way Certification is expected to take approximately three months. Staff anticipates the Request for Authorization for construction to be submitted to Caltrans in June of 2013. The construction of the project must be complete by March of 2014 without jeopardizing the grant funds.

Attachments:

*Professional Services Agreement – Bender Rosenthal, Inc.
Resolution*

**Palm Avenue Safe Routes to School Sidewalk and Bicycle Lane Project –
ROW Certification
PROFESSIONAL SERVICES AGREEMENT
Providing Payment of Prevailing Wages
(City of Auburn/Bender Rosenthal, Inc.)**

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and Bender Rosenthal, Inc., a California Corporation ("Consultant").

RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Right-of-Way Certification Services for the Palm Avenue Safe Routes to School Sidewalk and Bicycle Lane Project.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

2. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's February 27, 2013 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's 2013 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": March 11, 2013.
- 3.4 "Expiration Date": March 11, 2014.

3. **TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

4. **CONSULTANT'S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Thirty Five Thousand Dollars (\$35,000.00) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Tom Ganyon shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.6 To the extent that the Scope of Services involves trenches deeper than four feet (4'), Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

- (1) Material that the contractor believes may be material that is hazardous waste, as defined in Health and Safety Code § 25117 which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of law.
- (2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
- (3) Unknown physical conditions at the site of any unusual nature that materially differ from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in this Agreement.

5. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Approved Fee Schedule in full satisfaction for such services.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis pursuant to the Approved Fee Schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule or to compensation other than in compliance with this Agreement, including, without limitation, Section 5.1 above..
- 6.4 To the extent applicable, this Agreement is further subject to the provisions of Article 1.7 (commencing at § 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and

properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

- 6.5 To the extent applicable, at any time during the term of the Agreement, the Consultant may at its own expense substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code § 22300. At the request and expense of the consultant, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the City. Upon satisfactory completion of the contract, the securities shall be returned to the Consultant.

6. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but shall not seek to copyright such written products.

7. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

8. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not

be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

9. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly waives its statutory immunity under such statutes as to City, its officers, agents, employees and volunteers.

- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.

10. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming the City and its officers, employees, agents and volunteers as additional insureds. Prior to commencement of work under this Agreement, Consultant shall file such certificate(s) with City's Risk Manager.
- 11.6 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.

- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

11. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

12. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

13. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x142
Facsimile: (530) 823-4216

If to Consultant:

Bender Rosenthal, Inc.
4400 Auburn Blvd., Suite 102
Sacramento, CA 95841
Telephone: (916) 978-4900
Facsimile: (916) 978-4904

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11364 Pleasant Valley Road
Penn Valley, CA 95946
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

16. TERMINATION

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement as provided in Section 5.1 above and as otherwise provided in this Agreement.

18. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Placer County, California and Consultant

hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the City and Consultant.
- 18.10 To the extent applicable, this Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration if the parties fail to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.
- 18.11 This Agreement is further subject to the provisions of California Public Contracts Code § 6109 which prohibits the Consultant from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.
- 18.12 Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating

to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

19 **PREVAILING WAGES**

19.1 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is subject to prevailing wage law, including, but not limited to, the following:

19.1.1 The Consultant shall pay the prevailing wage rates for all work performed under the Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Consultant shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Consultant shall forfeit as a penalty to City \$50.00 or any greater penalty provided in the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Agreement employed in the execution of the work by Consultant or by any subcontractor of Consultant in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant.

19.1.2 Consultant shall comply with the provisions of Labor Code § 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Consultant is responsible for compliance with § 1777.5 by all of its subcontractors.

19.1.3 Pursuant to Labor Code § 1776, Consultant and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other

employee employed by Consultant in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

- 19.2 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code §§ 1810 and 1813, as well as California nondiscrimination laws, as follows:

19.2.1 Consultant shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Government Code § 12940. Pursuant to the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Consultant's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Consultant shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by Consultant or by any Subcontractor of Consultant, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.

- 19.3 Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written

request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
Bender Rosenthal, Inc.

By _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Date: _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Attest:

By _____
Deputy City Clerk

Date: _____

Approved as to form:

By _____
Michael G. Colantuono, City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK



February 27, 2013

City of Auburn - Department of Public Works
Attn: Carrie Huff, P.E.
Associate Civil Engineer
1225 Lincoln Way, Room 3
Auburn, CA 95603

ORIGINAL BY EMAIL:
Chuff@auburn.CA.gov

Subject: Cost Proposal – Safe Routes to School Project
Palm Avenue, Auburn, CA

Dear Ms. Huff:

Thank you for inviting Bender Rosenthal, Inc., (BRI) to join your team for delivery of Right of Way Program and Appraisal Services associated with the Palm Avenue Safe Routes to School, Local Assistance (off-system) Project. The attached table more thoroughly outlines the specific.

RIGHT OF WAY SCOPE OF SERVICES

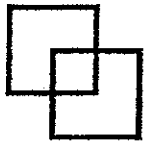
Right of Way Program Management, Appraisal and Appraisal Review services will be performed in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 USC 4601 *et seq.*) and implementing regulation, 49 CFR Part 24; California Government Code Section 7267 *et seq.*; California Code of Civil Procedure Sections 1263.010 to 1263.620 and 1255.010 to 1255.060; Housing and Community Development Title 25; State of California, Department of Transportation, Right of Way and Local Assistance Project Delivery Manuals, as applicable. A general discussion of the scope is as follows:

TASK 1 – RIGHT OF WAY MANAGEMENT

This task includes attendance at monthly (or other interval as specified by client) Project Development Team (PDT) meetings, monthly schedule and progress updates, and coordination efforts with the PDT and Right of Way teams throughout the life of the project.

Deliverables:

- Facilitation of weekly BRI staff meetings through the appraisal and acquisition phases of the project;
- Attend three (3) or more PDT meetings as may be directed by Client;
- Providing Monthly progress updates to PDT team and client staff; and
- Coordinating design issues between engineering team and Right of Way team.



TASK 2 – RIGHT OF WAY PROGRAM

The First Deliverable for this task will consist of development of all documents to be approved by Client and Caltrans for use in appraising real property interests, and development of a right of way cost estimate for budgeting purposes.

TASK 3 – APPRAISAL AND VALUATION SERVICES

BRI will develop complete appraisals for the client that will state the estimated fair market value of the fee simple or easement interest (as per Clients direction) in each referenced property. Our scope anticipates the need for three (3) summary appraisal reports and two (2) non-complex Minimum Value Estimates (Waiver Valuations). This document highlights that three (3) summary appraisals will be required along with two (2) non-complex Minimum Value Estimates (Wavier Valuations) with Client being advised that use of waiver valuations (Minimum Value Estimates) can be used when the proposed acquisition is less than \$10,000 and condemnation actions are not anticipated. The appraisal reports will be Summary formats as defined by USPAP that will be prepared in conformance with and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute, which fully incorporate the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. Jurisdictional exceptions may apply in some cases.

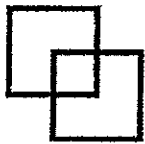
Plats and legal descriptions for each of the properties to be appraised will be provided to BRI by the City of Auburn. Some of the items that may affect the appraisal process include:

- Complexity of the valuation;
- Impact of the interests to be acquired (e.g. Temporary Construction Easements, and Public Utility easements);
- Damage Analysis (Severance Damage, Cost to Cure, etc.); and
- The analysis excludes crop damage analysis as this does not appear to apply.

CHANGE OF SCOPE

A change in scope may result in the following instances:

- Comments received after appraisal review complete;
- A change in engineering after property has been inspected by appraiser, requiring a new inspection;
- A change in engineering after completion of the appraisal;
- Addition of a parcel;
- Addition of easements, or other property rights;
- An increase in the number of damage analyses required; and
- An appraisal requiring additional expertise, such as an arborist, or fixture appraiser.



Assumptions

- Attendance to Client called meetings will be at standard mileage and hourly rates.
- Bi-lingual services are not included but are available via scope change.

Deliverables:

- Three copies of each Appraisal Report and Waiver Valuations that meet all State and Federal Standards.

TASK 4 – INDEPENDENT APPRAISAL REVIEW

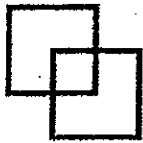
An independent review appraiser, either on staff or under contract to BRI, will be responsible for providing the following required appraisal review services for up to three summary appraisal reports.

Note: Waiver Valuation (parcels under \$10,000) do not require outside independent review. This proposal anticipates the preparation of three (3) Summary Appraisal Reports and two (2) waiver valuations (Minimum Value Estimates) based on the information supplied by Client to BRI.

Deliverables:

- Upon receiving appraisal reports, an office review of the reports using the various standards prescribed by the Federal and State Uniform Acts, FHWA, CALTRANS appraisal procedures, Uniform Standards of Professional Appraisal Practice and California Eminent Domain codes will be completed;
- Upon satisfactory completion of the appraisal report a review report and certificate report will be prepared.

NOTE: This proposal excludes; right of way certification (draft and final documents) title and escrow support services and acquisition of real property rights including but not limited to preparation of contract drafts after approval of a purchase agreement, and/or offers to owners.



SCHEDULE AND FEES

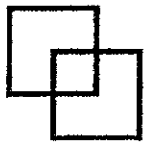
BRI proposes to deliver the Appraisal phase within three (3) months from the Notice to Proceed for a Target Right of Way Certification date of June 15, 2013. Our proposed fee based on scope provided is as follows:

Task	Description	Total
1. R/W Management	30 hours @ \$175/hour	\$ 5,250
2. Right of Way Program	50 hours @ \$150/hour	\$ 7,500
3. Appraisal Services: (Permanent/Temporary Easements, or Fee Title assuming values greater than \$10,000 per proposed acquisition)	Three (3) Summary Appraisals @ \$3,500/each Two (2) Waiver Valuations @ \$2,500/each	\$10,500 \$ 5,000
4. Independent Appraisal Review	Three (3) reviews @ 1,500/each	\$ 4,500
5. Administrative Services	25 hours @ \$90/hour	\$ 2,250
Total Budget:		\$35,000

The following are the assumptions behind the budget:

1. Full documentation to Federal and State standards for all tasks;
2. No expert witness testimony;
3. Client to provide preliminary title reports needed for the Project;
4. BRI to review existing easements and permits;
5. BRI to review legal descriptions and plats for the project;
6. The actual costs may differ from task to task, but the overall budget will not exceed the "Total Budget" shown in the above spreadsheet;
7. No Coordination with State or Federal right of way departments, other than listed in scope;
8. This fee assumes that no significant structures or improvements will be acquired;
9. Crop damages are excluded as none appear to apply;
10. Any external audit support will be billed on a time and material basis, as well as the following:
 - a. A change in engineering once the acquisition process has begun.
 - b. Addition of a parcel.
 - c. Addition of easements, or other property rights.
 - d. Any additional professional expertise.
11. BRI will prepare transmittal and forward closed files to Agencies Project Manager; and
12. Right of Way Certification and Title and Escrow support to be provided by Client.

EXHIBIT B
APPROVED FEE SCHEDULE



BENDER ROSENTHAL, INC.

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

2013 FEE SCHEDULE

Below are our standard 2013 rates for additional services required. These costs may vary depending on changes in the scope in work:

Cydney G. Bender, MAI	\$210/hr.*
David Wraa, MAI	\$210/hr.*
Designated Members of the Appraisal Institute (MAI/SRA)	\$210/hr.*
Senior Project Manager	\$175/hr.
Quality Control Auditor	\$160/hr.
Senior Appraiser	\$135/hr.
Relocation Specialist	\$145/hr.
Senior Acquisition Agent	\$135/hr.
Acquisition Agent	\$120/hr.
Appraiser	\$105/hr.
Other Associated Professional Staff	\$ 80/hr.
Researchers	\$ 80/hr.
Administrative/Production	\$ 70/hr.

*\$420 per hour for court or briefing preparation, depositions, any pre-trial conferences, court appearances, etc., should these ever become necessary.

Rates for appraisal services vary based on land use and type of acquisition. Appraisal services are generally completed on a lump sum basis rather than hourly rate.

All direct and indirect costs will be billed at cost plus 10%.

NON-COLLUSION DECLARATION

TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state]."

Signature

DATE

Printed Name of Signatory

WORKERS' COMPENSATION INSURANCE **CERTIFICATE**

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____

(Contractor)

By: _____

(Signature)

(Title)

Attest:

By: _____

(Signature)

(Title)

RESOLUTION NO. 13-

RESOLUTION AUTHORIZING A CONSULTANT AGREEMENT WITH BENDER
ROSENTHAL, INC. FOR RIGHT-OF-WAY CERTIFICATION SERVICES FOR THE
PALM AVENUE SIDEWALK AND BICYCLE LANE PROJECT

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the Director of Public Works to execute a consultant agreement with Bender Rosenthal, Inc. for required Right-of-Way Certification services for the Palm Avenue Sidewalk and Bicycle Lane Project subject to approval of form by the City Attorney in an amount not to exceed \$35,000.

A true and correct copy of the Agreement is attached hereto as Exhibit "A."

DATED: March 11, 2013

Kevin Hanley, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular session meeting of the City Council of the City of Auburn held on the 11th day of March 2013 by the following vote on roll call:

Ayes:

Noes:

Absent:

Stephanie L. Snyder, City Clerk